

## § 40.4

### § 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Designated contract markets must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined in § 40.1(f), of a contract for future delivery in an agricultural commodity enumerated in section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes:

- (1) Changes in trading hours;
- (2) Changes in lists of approved delivery facilities pursuant to previously set standards or criteria;
- (3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;
- (4) Reductions in the minimum price fluctuation (or “tick”);
- (5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority;
- (6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such non-substantive revisions of a product’s terms and conditions that have no effect on the economic characteristics of the product;
- (7) Fees or fee changes of less than \$1.00; and
- (8) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, DC, headquarters and that has been labeled “Non-material Agricultural Rule Change,” and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002]

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### § 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered entity may request pursuant to section 5c(c) of the Act that the Commission approve any rule or proposed rule or rule amendment under the following procedures:

(1) Three copies of each rule or rule amendment submission under this section shall be furnished in hard copy form to the Secretary of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or electronically in a format specified by the Secretary of the Commission. One copy of each submission shall be transmitted by the registered entity to the regional office of the Commission having local jurisdiction over the registered entity. Each request for approval under this section shall be in the following order and shall:

(i) Label the submission as “Request for Commission rule approval”;

(ii) Set forth the text of the rule or proposed rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(iv) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anti-competitive effects on market participants or others, how the rule fits into the registered entity’s framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(v) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule that were

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not incorporated into the proposed rule prior to its submission to the Commission;

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission's rule or interpretation; and

(vii) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification.

(2) [Reserved]

(b) *Forty-five day review.* All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act, forty-five days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraphs (a)(1)(i) through (vi) of this section, and

(2) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(c) *Extensions of time.* The Commission may extend the review period in paragraph (b) of this section for:

(1) An additional thirty days, if the Commission, within the initial forty-five day review period, notifies the submitting entity that the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance. This notification shall briefly describe the na-

ture of the specific issues for which additional time for review is required; or

(2) Such additional period as the submitting entity has so instructed the Commission in writing.

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the proposed rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of this section, that the proposed rule would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity does not prejudice the entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission approval or from submitting the rule or rule amendment as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does not violate the Act or rules thereunder.

(f) *Expedited approval.* Notwithstanding the provisions of paragraph (b) of this section, changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the registered entity of the applicability of this paragraph (f) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify in the notice, provided, however, that the Commission may, at any time, alter or revoke the

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applicability of such a notice to any particular product.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002]

### § 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) *Required certification.* A designated contract market or a registered derivatives clearing organization may implement any new rule or rule amendment (other than a rule or rule amendment approved or deemed approved by the Commission under § 40.5) only if:

(1) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest;

(2) The designated contract market or registered derivatives clearing organization has filed a submission for the rule or rule amendment with the Commission at its Washington, D.C. headquarters and at the regional office having local jurisdiction, and the Commission has received the submission at its headquarters by close of business on the business day preceding implementation of the rule; *provided, however,* rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation but in no event more than 24 hours after implementation; and

(3) The rule submission includes:

(i) The label, “Rule Certification” or, in the case of a rule or rule amendment that responds to an emergency, “Emergency Rule Certification”;

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of implementation;

(iv) A brief explanation of any substantive opposing views not incorporated into the rule; and

(v) A certification by the entity that the rule complies with the Act and regulations thereunder.

(b) *Stay.* The Commission may stay the effectiveness of a rule implemented pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

(c) *Notification of rule amendments.* Notwithstanding the rule certification requirement of section 5c(c)(1) of the Act, and paragraphs (a)(2) and (a)(3) of this section, a designated contract market or a registered derivatives clearing organization may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The designated contract market or registered derivatives clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled “Weekly Notification of Rule Changes” and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or electronically in a format specified by the Secretary of the Commission; and

(2) The rule governs:

(i) *Nonmaterial revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on a product that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for